IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10415 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANLAL SHANKARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10415 of 2000

MRS YOGINI V PARIKH for Petitioner No. 1

MS RITA CHANDARANA, AGP for Respondents No.1,3

MR HS MUNSHAW for Respondent No.2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the order dated 27.07.1998 passed by the respondent No.1, by which the respondent No.1 was pleased to declare that the services of the petitioner shall be deemed to have been automatically come to an end w.e.f. 01.09.1984.

The reasons for coming to the said conclusion was that according to the respondent No.1, the petitioner had not remained present continuously in service and, therefore, as per Rule 33 of the B.C.S.R. after three years of continuous absence, his services would automatically come to an end.

2. The petitioner, who joined the Government service in the Directorate of Agriculture on 26.04.1960, has contended inter alia that the said order is illegal and unlawful.

3. It is not in dispute that by a letter dated 20.03.1981, the petitioner indicated that he wants to accept voluntary retirement and question of his leave is not being finalized though he has submitted necessary certificate in this regard. No reply was given by the respondent to this letter of the petitioner.

4. It is also not in dispute that on 31.08.1984, the petitioner informed the respondent that on account of ill-health of his wife he wishes to accept voluntary retirement for which purpose, he has given notice for 90 days and he may be retired on completion of the said period on 29.11.1984. The Joint Director of Agriculture, Rajkot Division by his letter dated 19.12.1984 informed the petitioner that his notice of voluntary retirement has been received, but that he can ask for voluntary retirement only after completion of 20 years of service and the decision, whether he has completed 20 years qualifying service or not, has to be verified by the Accountant General, Ahmedabad and only after receiving the certificate from the said authority, such notice could be given. The notice of the petitioner dated 01.09.1984, therefore, cannot be treated as notice of voluntary retirement.

5. By another letter dated 22.04.1996, the petitioner was informed that he had given the notice for voluntary retirement on 01.09.1984, but he was asked to supply certain details for which the reminder was being given. In the said letter, it was indicated that the petitioner should make proper application for regularizing the leave period between 08.08.1982 to 06.11.1982, 07.11.1982 to 06.12.1982 and 07.12.1982 to 30.08.1984. Thereafter, as noted above, the impugned order dated 27.07.1998, came to be issued.

6. From the above recording of the facts, it can be seen that the petitioner had given the notice for voluntary retirement on 01.09.1984 and indicated that he

may be permitted to retire after 29.11.1984 i.e. upon completion of 90 days of the notice period. Admittedly, within the said period of 90 days of the notice, the respondent neither accepted nor rejected, the request of the petitioner to permit him voluntary retirement from service. The respondents have produced on record the Government Resolution under which the Government Servants, have been given option to accept voluntary retirement after completion of 20 years of pensionable service. In the said Government Resolution dated 03.02.1978, it is clearly provided that the Government Servants after 20 years of pensionable services could opt for accepting retirement, after giving three months notice. In paragraph 7 of the said Government Resolution dated 03.02.1978, it is provided inter alia that except for the cases where the complaints have been filed before the Court, normally in all other cases, request of the Government Servant for voluntary retirement should be accepted. It is further provided that even where such request is to be refused, such powers should be exercised within the period of notice, by issuing necessary orders in this regard, otherwise, the Government Servants will be entitled to presume that his notice for voluntary retirement is accepted and in terms of the notice, his retirement shall have come into effect.

7. From the above provisions of the Government Resolution under which the petitioner had tendered his notice for voluntary retirement, it is clear that if, the Competent Authority wanted to refuse such permission in favour of the petitioner, a decision is required to be taken within the period of notice itself. The Government Resolution itself provides that in case such request is not refused by an order passed within the period of notice, the Government Servant shall be deemed to have been permitted to retire from service.

8. In the present case, admittedly, no order was passed rejecting the request of the petitioner to permit him to retire voluntarily upon the completion of a period of 90 days. After the date of the notice dated 01.09.1984, any action taken subsequently would not change the position. In terms of the provisions of the Government Resolution, the petitioner had, actually, been permitted to retire voluntarily and unless it is pointed out that he is not authorized to issue notice itself rejection of his request, after the period indicated therein is over, would be of no avail.

9. In the decision of STATE OF HARYANA AND OTHERS Vs. S. K. SINGHAL, reported in (1999) 4 SCC 293,

wherein the Hon'ble Supreme Court, while interpreting the provisions of Punjab Civil Services Rules, which provided that the notice of voluntary retirement shall require acceptance by appointing authority subject to Rule 2.2 of Punjab Civil Services Regularization and while the proviso further laid down that where the retirement shall automatically come into force, if, appointing authority did not refuse to grant the permission for retirement during notice period; was pleased to hold that as per the Rules and the proviso thereto, the retirement shall become effective on conclusion of notice period where appointing authority does not refuse to grant the permission for retirement before the expiry of the notice period.

10. The said decision in the case of STATE OF HARIYANA Vs. S. K. SINGHAL (Supra) was followed by the Hon'ble Supreme Court in the decision of TEK CHAND Vs. DILE RAM, reported in (2001) 3 SCC 290, and made following observations in paragraph Nos.34 and 35 were made.

"34. This Court in a recent judgment in the case of State of Haryana v. S.K.Singhal after referring to few earlier decisions of this Court touching the very point in controversy in para 13 of the judgment has held thus: (SCC p.303).

"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J.Shelat case and in Sayed Muzaffar

Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission."

"35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntary retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

11. In the present case also, as mentioned earlier, one finds that this Government Resolution in question for voluntary retirement contained similar clauses providing that normally a request of voluntary retirement should not be refused and even in such a case, the order should be passed within the period of notice, refusing the request of the Government Servant and if such an action is not taken, the Government Servant shall be deemed to have been retired at the end of the period of notice.

12. Even otherwise, there is no dispute raised by the

respondents regarding the petitioner having completed 20 years pensionable service. Admittedly, the petitioner joined the service on 24.06.1960 and, therefore, he had completed 20 years of service on 24.06.1980. Even if the respondents had difficulty in regularizing the petitioner's period of absence during the years 1982 to 1984, the same would not change the situation with respect to the question of the petitioner having completed of 20 years pensionable service. In that view of the matter upon completion of three months of notice period of voluntary retirement given by the petitioner on 01.09.1984, the petitioner had in effect retired from the Government Service.

13. In the result, the petitioner having retired with effect from 20.11.1984, the question of absence, thereafter, could not have been raked up by the respondents. In the result, the impugned order dated 27.07.1998 is illegal, unreasonable and is hereby quashed and set aside. The petitioner would be entitled to all benefits of the setting aside of the said order and the conclusion that I have reached that the petitioner would be seemed to have retired from Government service w.e.f. 01.12.1984. It is, therefore, directed that the respondents shall release all the retiral dues of the petitioner, as if, he voluntary retired with effect from 01.12.1984. The above exercise be completed within a period of four months from the date of receipt of a copy of this order. In case for arrears of pension, however, considering that the petitioner himself has not taken any steps to assert his rights, in facts of the present case. I am not inclined to grant any interest to the petitioner. However, in case the respondents fail to make the payment of outstanding retiral dues of the petitioner, as per this order; the same shall carry interest at the rate of 8% P.A. after completion of the period of four months, as provided hereinabove till its actual payment.

14. In the result, the petition is allowed. Rule is made absolute. No order as to costs.

[Akil Kureshi,J.]

(vijay)